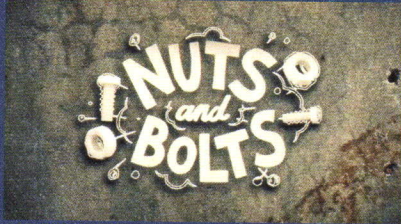


MAKING A STRONG CASE FROM START TO FINISH



OF SUCCESSFULLY TRYING A CHILD SEXUAL ABUSE
CASE

By: Connie Spence



A CHILD ABUSE PROSECUTOR Truly a "COUNSELOR at law"



GETTING STARTED

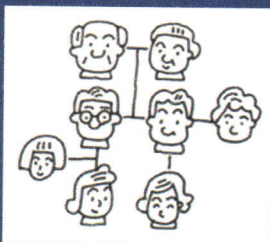


GETTING STARTED

- You have to approach a child abuse case different than that of any other case.
- Why?

GETTING STARTED

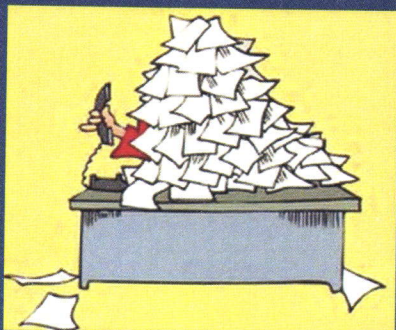
- You have to approach a child abuse case different than that of any other case.
- Why?



GETTING STARTED

- Because these cases usually involve a relationship between the parties, you're part prosecutor, part therapist.
- Have to look behind the words on paper to understand family dynamics and interpersonal relationships.

THE FILE HITS YOUR DESK





THE FILE HITS YOUR DESK



- Read the Offense Report!
- It's just the tip of the iceberg.
- The O/R gives you the basis and basics of what the case is about but there's a lot MORE that's not in the OR.
- It's up to YOU to find it.

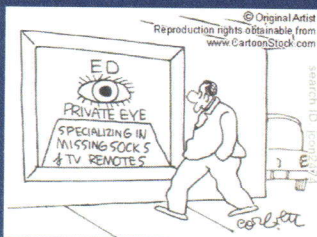
READING THE O/R... THINK LIKE A LAWYER



READING THE O/R... ASK YOURSELF

- How old is the child?
- Relationship between the D and child?
- When did the SA occur? How long b/w SA and disclosure?
- What made the child disclose?
- Is mom on board?
- Child still cooperative?
- Who is the outcry witness?

READING THE O/R... THINK LIKE AN INVESTIGATOR



READING THE O/R... THINK LIKE AN INVESTIGATOR

- Who ELSE was told - not officially "outcry" but still a WITNESS
- What is D going to come up with as to why CW is lying (Motive)?
- When did all this take place? How long has the file been on the officer's desk? This makes a difference as to how you approach witnesses.
- Did the D give a statement?
- If NO, was he given the opportunity to tell his side of story? How genuine was the effort?
- What's the CW's background? School records?
- Is CPS involved?

READING THE O/R... THINK LIKE AN INVESTIGATOR

- Medical Records? Statements made to examiner?
- How can YOU make the case better?

MAKING CONTACT




MAKING CONTACT

- Who is the first person you should contact on the case?
- Important decision because word travels fast within the family that you're calling.
- You want to talk to the most credible, unbiased person first. They'll tell you what REALLY happened.
- Could be a teacher, nurse, school counselor.
- You know your officer didn't interview everyone.

MAKING CONTACT


THE EARLIER THE BETTER!



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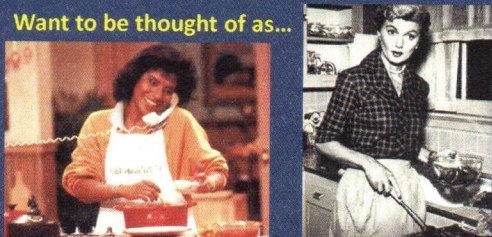
MAKING CONTACT

- What if it's Momma?



MAKING CONTACT

- Moms are funny... they don't want to be JUDGED.
- Especially by an outsider.
- Want to be thought of as...



MAKING CONTACT

- WHEN YOU CALL HER, IDENTIFY YOURSELF IN A FRIENDLY, OPEN MANNER
- LET HER KNOW YOU'RE THERE FOR HER
- ASK HER HOW SHE IS DOING?
- ASK HER IF SHE HAS SOME TIME TO TALK TO YOU NOW
- NO JUDGMENT!

MAKING CONTACT

- Even if you know she's an idiot because she met the guy on Craigslist and let him move in 3 days later.
- You still have to maintain genuine air of non-judgment.



PEGGY BUNDY

MAKING CONTACT

- Getting mom on board is essential to your case.
- Sometimes mom didn't believe the CW because she "lies a lot."
- What does she lie about?
- The truth hurts and sometimes you have to tell mom "you didn't do the right thing then, but you can now."
- Moms carry around a lot of guilt.

MAKING CONTACT

- YOU KNOW YOU'RE MAKING PROGRESS WHEN....



....SHE CRIES

MAKING CONTACT

- HOW DO YOU BREAK THROUGH?
- YOU MAKE IT "ALL ABOUT HER!"
- "IT'S NOT YOUR FAULT":
 - ALL YOU DID IS LOVE HIM...
 - ALL YOU DID IS TRUST HIM...
 - YOU LET HIM IN YOUR LIFE...YOU OPENED YOUR HOME TO HIM
 - HE BETRAYED YOU (BY TOUCHING YOUR CHILD)

MAKING CONTACT

- Have to get mom on your side.
- When she realizes you're only trying to hold the D responsible and not judge her... she'll hopefully come on board.
- She LOVED the D.
- Jury wants to hear from mom!
- Better handle it in voir dire if you're not putting mom on. Do we get to choose our parents?
- Mom can tell you about child's behavior changes.
- Tell you about D's background and access to CW.

MAKING CONTACT

- Develop a good relationship with mom by LISTENING. Everybody wants to talk about themselves and they want someone to listen.
- Ask them to tell you the good, the BAD, and the UGLY of their relationships.
- There are always family skeletons hiding in the background.

MAKING CONTACT

- What's the D telling his lawyer about why the child is lying?
- The D is telling his attorney EVERYTHING... especially the BAD stuff...so tell ME!

THE VIDEO OF THE CHILD

YOU GOTTA WATCH IT!



VIDEO

- DON'T RELY ON OFFICER'S SUMMARY

TRANSCRIBE IT!

- Word for word
- You do it! Not your paralegal, not your intern, not your secretary
- It makes YOU know it

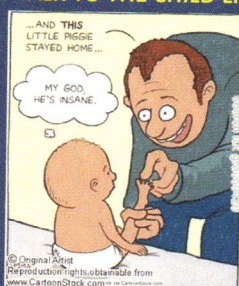
MEETING THE CHILD

- Try to meet with the child no more than two times before trial.
- Don't want to wear the kid out and make her/him a robot on the stand.
- Get them to talk. Great icebreaker: **pooping and farting**. It always brings a smile.
- Open ended questions.
- Ask age appropriate questions about TV or books or social media.



MEETING THE CHILD

DONT TALK TO THE CHILD LIKE A BABY



MEETING THE CHILD

- Ask the child what they call their privates.
- Use their words not yours.
- **It's not about you!** The kid should be doing the talking.



MEETING THE CHILD

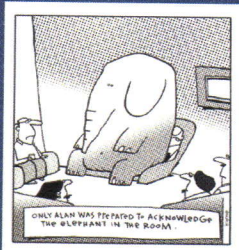
- **YOU HAVE TO CONVINCE YOURSELF THE CHILD IS TELLING THE TRUTH!**
- You have to confront the doubts you have!
- Ask "why" or "how" questions.
- "How did he do this while your sister is in the room?"
- Ask the questions in a non accusatory/non judgmental way
- Ask them their senses. What did the white stuff feel like? Look like?
- Get DETAILS! DETAILS! DETAILS!

MEETING THE CHILD

- If you get a **FLAT AFFECT** you need to pierce that.
- Look the child in the eyes and make them know you care
- Now is the time to be the Jury. If you have a question about how something could happen, then the jury will too.

MEETING THE CHILD

- IF THERE'S AN ELEPHANT IN THE ROOM...DON'T AVOID IT...CONFRONT IT!

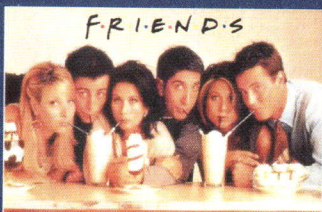


THOSE "OTHER PEOPLE"



THOSE "OTHER PEOPLE"

- The people you know the officer did NOT talk to because they aren't "witnesses"
- You find out about these people from talking to mom or other first contact
- Never underestimate the child's...



THOSE "OTHER PEOPLE"

- They can tell you about her demeanor, etc.
- Why did the friend believe the CW?
- You have to get to them quick because the case is probably 6 to 9 months old already.
- They move or defense attorney gets to them first.
- They might tell you why the CW is NOT telling the truth. That's just as important!

THOSE "OTHER PEOPLE"

- IF YOU'RE REALLY GOOD
- "THOSE OTHER PEOPLE" WILL BE/TELL YOU

EXTRANEIOUS VICTIMS



THE MEETING BEFORE TRIAL



THE MEETING BEFORE TRIAL

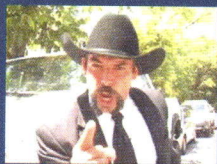
- It's all about communication.
- Explain what the jury will see.
- It's their one chance to communicate to the jury what they saw and felt.
- Emphasize (especially to mom and child) that you can't be a robot on the witness stand.
- It's ok to show emotion. OK to cry.
- LISTEN to the question. That's why you're meeting with them so you know what to ask.
- Explain to them about being NONRESPONSIVE.
- Listen closely during cross examination.

THE MEETING BEFORE TRIAL

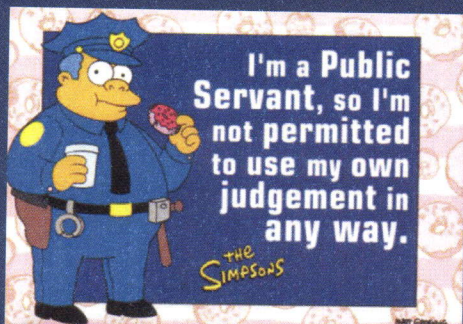
- If yes or no doesn't leave the right impression... then SPEAK!
- Don't be defensive with the defense attorney especially when you've been nice to the DA.
- THIS IS THE ONLY TIME THE JURY GETS TO SEE AND HEAR FROM YOU.
- COURTROOM VISIT

THE MEETING BEFORE TRIAL

- Don't leave your brain in the hallway
- Don't be defensive with the defense attorney especially when you've been nice to the DA.



POLICE OFFICER WITNESSES



POLICE OFFICER WITNESSES

- Avoid putting them on.
- They usually haven't done an "investigation."
- This gives the defense attorney ammunition to point out a lack of an investigation and "rush to judgment."
- If you're working the case up correctly you'll have done more of an investigation than the officer.
- The scene officer may be helpful especially if you get to him fast. There's only one chance to grab evidence. Swabbing a penis?

VOIR DIRE

Go to **jury Duty!** Go directly to **jury duty!**

Do not go to **work!**
Do not collect \$200



VOIR DIRE

- This is where you win or lose your case.
- These are DIFFICULT cases.
- Watch the Jury Panel when the Judge tells them the Charge.
- Use their reaction during your voir dire.



VOIR DIRE

TAILOR YOUR VOIR DIRE TO YOUR FACTS!



VOIR DIRE

- INTRODUCTION: EXPLAIN THIS PART OF THE TRIAL – TELL THEM YOU CAN'T TALK ABOUT THE FACTS OF THIS CASE...
- "I WATCHED YOUR FACES WHEN THE JUDGE TOLD YOU WHAT THE DEF. WAS CHARGED WITH..."
- THIS IS NOT A FORUM FOR WHO LIKES CHILD ABUSERS...
- WE NEED JURORS WHO CAN BE FAIR

VOIR DIRE

- WHERE DO WE LEARN OUR LAW?
- TV
- Legal dramas, CSI, Law&Order, Boston Legal, Injustice
- Oath to Forget – Raise your right hand
- This is not TV – no script/no rehearsals

VOIR DIRE

- ELEMENTS OF CRIME
- WHAT THE HECK ARE "ELEMENTS?"
- LAWYER SPEAK FOR WHO, WHAT, WHEN, AND WHERE OF A CRIMINAL OFFENSE
- THE DEFENDANT
- ON OR ABOUT DATE
- IN HARRIS COUNTY, TEXAS
- INTENTIONALLY AND KNOWINGLY CAUSE THE SEXUAL ORGAN OF CINDY SMITH, A PERSON YOUNGER THAN 14 YEARS OF AGE AND NOT THE SPOUSE OF THE D, TO CONTACT THE SEXUAL ORGAN OF THE D

VOIR DIRE

- **THE WHO - THE DEFENDANT:** He is indeed the person who committed the offense
- **THE WHEN - "ON OR ABOUT":** "The law says" I have to prove that the offense occurred before the C/W's 28th birthday / sometimes don't know the EXACT date / particularly with children
 - You can interact with the jury on this point if you have an issue as to date.
 - If not, you don't have to spend too much time on this element.
- **THE WHERE - IN HARRIS COUNTY, TEXAS**

VOIR DIRE

• THE WHAT - INTENTIONALLY AND KNOWINGLY CAUSE THE SEXUAL ORGAN OF...

- YOU CAN INTERACT WITH THE JURY AT THIS POINT IF YOU HAVE AN "ACCIDENT" DEFENSE OR A "I WAS ASLEEP" DEFENSE
- WHAT DOES "CONTACT" MEAN : DOES NOT MEAN PENETRATION
- OR IF YOU DO HAVE "PENETRATION" PLED – TALK ABOUT WHAT THAT MEANS. *START YOUR EXPLANATION WITH "THE LAW SAYS..."*

VOIR DIRE

• SEXUAL ABUSE – DOES THIS USUALLY HAPPEN BETWEEN STRANGER TO STRANGER OR A PERSON WHO KNOWS/HAS A RELATIONSHIP WITH THE C/W?

- *SEGUE INTO:*
- **DELAYED OUTCRY**
- HOW MANY OF YOU HAVE HEARD THIS TERM?
- WHAT DOES THIS MEAN TO YOU?
- WHY DO YOU THINK A KID WOULD NOT TELL RIGHT AWAY?
- *I CAN'T GET INTO THE FACTS OF TODAY'S CASE, BUT IN MANY CHILD SEXUAL ABUSE CASES, THERE IS DELAYED OUTCRY...*

VOIR DIRE

• *SEGUE INTO NO DNA* • **NO DNA – HOW MANY PEOPLE HAVE HEARD OF DNA?**

- IF THERE IS DELAYED OUTCRY...WOULD YOU EXPECT THERE TO BE DNA? *I CAN'T GET INTO THE FACTS OF TODAY'S CASE, BUT IN MOST CASES, THERE IS NO DNA.*
- HOW MANY PEOPLE FEEL LIKE YOU WOULD HAVE TO HAVE DNA EVIDENCE BEFORE YOU COULD CONVICT? (OR IF OBJECTION TO COMMITMENT QUESTION: HOW MANY PEOPLE HERE WOULD REQUIRE ME TO PRESENT DNA EVIDENCE BEFORE YOU COULD FIND THE DEF. GUILTY OF A SERIOUS CHARGE LIKE AGG SEXUAL OF A CHILD, EVEN IF OTHER EVIDENCE CONVINCED YOU BARD?

VOIR DIRE

- PERFECT SEGUE INTO NEXT TOPIC...
- NO MEDICAL EVIDENCE
- NOW THAT WE TALKED ABOUT DELAYED OUTCRY
- AND NOW THAT YOU KNOW WHAT THE LAW SAYS "SEXUAL CONTACT" IS – WOULD YOU NECESSARILY EXPECT MEDICAL EVIDENCE/PHYSICAL INJURY?
- NOW THAT YOU KNOW WHAT THE LAW SAYS "PENETRATION" IS – WOULD YOU NECESSARILY EXPECT MEDICAL EVIDENCE/PHYSICAL INJURY?
- I CAN'T GET INTO THE FACTS OF TODAY'S CASE, BUT IN MANY CASES WHERE THERE IS SEXUAL ABUSE WE HAVE NO MEDICAL EVIDENCE
-
- IS THERE ANYONE HERE WHO MUST HAVE MEDICAL EVIDENCE/PHYSICAL INJURY IN ORDER FOR YOU TO FIND THE DEFENDANT GUILTY?
- (IF OBJECTION TO COMMITMENT QUESTION: How many people here would require me to present medical evidence of some kind before you could find a defendant guilty, even if other evidence convinced you BARD.)

VOIR DIRE

- SEGUE INTO: NO DATA, NO MEDICAL EVIDENCE...WHAT KIND OF EVIDENCE WOULD YOU EXPECT TO HEAR? GET THE JURY TO ANSWER!
- ONE WITNESS RULE - I CAN'T GET INTO THE EVIDENCE OF TODAY'S CASE, BUT MANY TIMES...who gets to choose the when and where of the crime – kid or perpetrator
- "IF I PROVE EACH AND EVERY ONE OF MY ELEMENTS BARD, WOULD YOU BE ABLE TO FIND THE DEF. GUILTY BASED UPON THE TESTIMONY OF BUT ONE WITNESS?"
- You must hit this issue really hard! Because most of the time, that's all you got.
- Individual voir dire - LOOK EACH JUROR IN THE EYE
- You might even go one step further and get in: what if that one witness was a CHILD witness
- Be prepared for questions from the jury – you da boss, act like one!

VOIR DIRE

- TESTIMONY IS EVIDENCE
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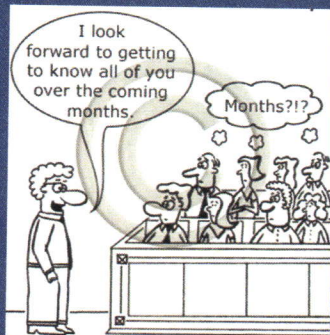
VOIR DIRE

- SEGUE INTO:
- C/W'S DEMEANOR ON STAND – JURY'S EXPECTATIONS – THIS IS NOT TV
- VIDEOTAPED INTERVIEW OF CW NOT ADMISSIBLE

VOIR DIRE

- OTHER POTENTIAL TOPICS DEPENDING ON CASE
 - MALE C/W (NO CONSENT)
 - POLICE OFFICER TESTIMONY
 - YOUNG LOOKING DEF/OLD LOOKING DEF
 - GOOD LOOKING DEF
 - GROOMING
 - RECANTING C/W – C/W WITH ISSUES
 - BAD MOMS
 - CPS

OPENING STATEMENT



OPENING STATEMENT

- NEVER waive opening
- Don't miss a chance to get in front of the Jury but don't get too detailed. Why?
- You never know what a child is going to say until it comes out of their mouth.
- Don't want to steal the child's thunder.
- Avoids giving defense counsel a preview and ability to prepare for cross of the child.
- Give the Jury an idea of what they'll hear.

WITNESS ORDER

- Give this some serious thought.
- Think outside the box.
- It's not the typical criminal case where you put the cop on first.
- Structure your witnesses based upon relationships to the parties, what makes sense as to disclosure, and to maximize the child's testimony.

STATE VS. HAIM SILBER

- INDECENCY – TOUCHING – ONE TIME EVENT
- CW was 12 – immediate OUTCRY
- D was mom's live-in boyfriend.
- CW's outcry witness/mother not protective
- C/W very intelligent/articulate
- School counselor witness
- CPS Caseworker witness
- Great forensic interviewer

HAIM SILBER WITNESS ORDER

- CW
- Mother
- Counselor at school
- CAC Interviewer
- CPS worker

STATE VS ANDRES NINO

- Oral sex – one time offense
- CW 7 year old boy.
- The D is his second cousin who is an adult.
- Mom was protective/appropriate/outcry witness
- Medical exam done, kid not talking

STATE VS ANDRES NINO

- MOM
- CW
- CAC interviewer
- PUNISHMENT
- GOLDEN EGG FROM MOM– EXTRANEIOUS VICTIM!

DIRECT EXAMINATION OF A CHILD



DIRECT EXAMINATION OF A CHILD

- Move your chair closer to the CW.
- Use dolls if necessary but avoid them with older children. That looks disingenuous.
- Ask your "get comfortable" questions.
- Ask your "truth and lie" questions.
- USE FUNNEL TECHNIQUE: Ask more general questions, then narrow it down.

DIRECT EXAMINATION OF A CHILD

- ...Where in your house did your dad touch you?
- My bedroom.
- What time of the day or night did this happen?
- At night.
- Was it light or dark in your bedroom?
- Dark.
- If it was dark, how could you see?
- The bathroom light was on.
- Who was in your bedroom when your dad touched you?
- Me and my dad.
- What were you doing before this happened?
- I was sleeping.

DIRECT EXAMINATION OF A CHILD

- Where were you sleeping?
- In my bed.
- Do you remember where you sleeping on your bed on your back, your side, your stomach, or what?
- My back.
- How was it that you knew your dad was touching you?
- I felt it.
- What was the first thing you felt to wake you up?
- I felt him touching my private part.

DIRECT EXAMINATION OF A CHILD

- When you felt him touching your private part, was that on top of your clothes or underneath?
- On top.
- And how did you know it was your dad that was touching you?
- I opened my eyes a little bit.
- Can you show us?
- How did that make you feel when you first knew that your dad was touching your private part?
- I was scared.

DIRECT EXAMINATION OF A CHILD

- **TIP:** Always incorporate the act and who was committing that act in your question.
- Include the CW's previous answer in your next question.
- Make it clear to the jury that it was the D who was doing what the CW is describing.
- Asking WHY questions allows the jury to experience what the CW is saying.

DIRECT EXAMINATION OF A CHILD

- After you woke up because your dad was touching you, what did you feel next?
- I felt him put his hand inside my underwear.
- How did he put his hand in your underwear – from the top, from the side, or what?
- From the side, the leg.
- What part of his hand did he put inside of your underwear?
- His finger.
- Do you know what finger?

DIRECT EXAMINATION OF A CHILD

- No.
- What part of your body did his finger touch when he put it inside of your underwear?
- My private part.
- Did his (your dad's) finger touch the inside or the outside of your private part?
- Inside.
- Do you know what he did with his finger before he put it in your private part?
- Yes.

DIRECT EXAMINATION OF A CHILD

- What?
- He put it in his mouth.
- How do you know?
- I saw him and it felt wet.
- What did you feel his finger do when he touched the inside of your private part...did it stay still, or move, or what?
- Moving.

DIRECT EXAMINATION OF A CHILD

- You see what you're doing?
- YOU'RE ASKING VERY SPECIFIC QUESTIONS IN A NON-LEADING MANNER.
- YOU'RE STRETCHING OUT THE ABUSE.
- IF YOU JUST SAY: WHAT HAPPENED? THE CHILD IS GOING TO ZIP THROUGH IT AS FAST AS SHE CAN. OR SHE'S GOING TO SAY "I DON'T REMEMBER."

DIRECT EXAMINATION OF A CHILD

- When his finger was moving, how was it moving?
- Back and forth.
- Can you show us?
- How did that make you feel?
- Bad.
- Did it hurt or not hurt?
- It hurted.
- Had anyone ever done anything like that to you before?
- No.
- What did you do when he was doing that?
- I turned over.
- Why?

DIRECT EXAMINATION TIPS

- If your trial is a long time after the abuse and your child is older looking.... Take some still shots from your CAC video (video not admissible) and put those photos into evidence
- Ask the parents for pictures of the child around the time of the abuse.
- If a child told you about sounds, but won't say it on the stand...get creative

DIRECT EXAMINATION

- OUTCRY WITNESS
 - DRAW IT OUT – DON'T RUSH IT
 - EMPHASIZE THE TRUST ASPECT IF WITNESS IS NOT THE MOM
 - DEMEANOR JUST AS IMPORTANT AS WORDS
 - DOESN'T HAVE TO BE THE FIRST PERSON...THE FIRST PERSON THAT THE C/W GAVE "MORE THAN A GENERAL ALLUSION OF SEXUAL ABUSE."

DIRECT EXAMINATION

- MEDICAL PERSONNEL
 - DON'T RUSH IT
 - GO THROUGH EVERY SECTION ON CAC MEDICAL REPORT
 - EXPLAIN IT, BUT DON'T BEAT A DEAD HORSE
 - THE WHY'S ARE IMPORTANT
 - THE POSITIONING OF THE C/W FOR THE EXAM/USE A DOLL, IF NECESSARY
 - FINAL WORDS: "THE BEST EVIDENCE IS A CHILD'S DISCLOSURE"

DIRECT EXAMINATION

- USE EXPERTS IF NECESSARY, BUT MANY TIMES IT'S NOT
- FORENSIC INTERVIEWERS SOMETIMES BETTER THAN "EXPERT"

CROSS EXAMINATION

- Know your case!
- If you have extraneous offenses listen for that opening. Sometimes defense attorneys can't help themselves!
- Sometimes the Defendant on the stand can help you convict them!

CROSS EXAMINATION

- DA: (Searing cross) So...you say you didn't abuse Marketta?
- Def Answer: I've **never** abused any child in my life.
- Judge and I looked at each other. It was as if the sun shined a little brighter...
- OOPS!

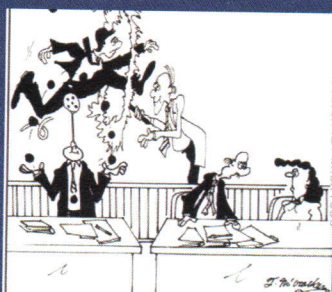
CROSS EXAMINATION

- Extraneous offense where he had sexual intercourse with his girlfriend's daughter about 15 years before. A case was filed, but it was dismissed because the child recanted. She is now an adult.
- She got to testify in rebuttal, because D had "opened the door."
- Whew!

OBJECTIONS

- **BE ON YOUR TOES – OBJECT TO RELEVANCE**
- **DON'T LET THE D OR HIS WITNESSES GO OFF ON IMPROPER IMPEACHMENT EVIDENCE – extrinsic evidence of specific acts of the C/W**

CLOSING ARGUMENT



"Did you sense that the jury wasn't paying attention to my closing arguments?"

CLOSING

- **YOUR GOAL IS TO MAKE THE JURORS SQUIRM IN THEIR CHAIRS**
- **YOUR GOAL IS TO MAKE THEM LOOK AS UNCOMFORTABLE AS POSSIBLE**



CLOSING

- YOUR GOAL IS MAKE THEM RE-LIVE THE ABUSE THROUGH THE WORDS OF THE CW
- DON'T SKIP OVER THE GROSS PARTS – EMBRACE THEM
- NOW IS **NOT** THE TIME TO BE POLITE
- BE DRAMATIC BUT SINCERE
- SOMETIMES TALKING IN LOWER TONES IS WAY MORE EFFECTIVE THAN YELLING

CLOSING

- LOOK EACH AND EVERY JUROR IN THE EYE AND REMIND THEM WHAT THEY SAID IN VOIR DIRE ABOUT ONE WITNESS –
TESTIMONY IS EVIDENCE



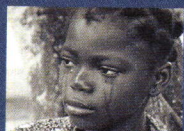
CLOSING

- MOVE ABOUT THE ROOM IF THAT'S YOUR STYLE
- GO UP TO THE WITNESS STAND – IT'S SCARY
- USE THE DOLLS IF YOU THINK THAT WILL HELP THE JURY TO **VISUALIZE** THE SEX ACT



CLOSING

- YOUR JOB IS MAKE THEM REMEMBER THE CW WHO IS NO LONGER IN THE COURTROOM



MAKE THIS YOUR PASSION